

Center for American Progress



doing
what works



How Sunlight Can Improve Federal Contracting

Nine Recommendations to Make Government Contracting
More Effective and Efficient for Taxpayers

Pratap Chatterjee March 2012



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CAP's Doing What Works project promotes government reform to efficiently allocate scarce resources and achieve greater results for the American people. This project specifically has three key objectives:

- Eliminating or redesigning misguided spending programs and tax expenditures, focused on priority areas such as health care, energy, and education
- Boosting government productivity by streamlining management and strengthening operations in the areas of human resources, information technology, and procurement
- Building a foundation for smarter decision-making by enhancing transparency and performance measurement and evaluation

This paper is one in a series of reports examining government accountability and efficiency.

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Introduction and summary

A single, streamlined database that tracks fraud, waste, and abuse in federal government contracts will help save taxpayers money and reward good companies. President Barack Obama in a June 2011 executive order charged the newly established Government Accountability Transparency Board to start designing such a database within six months.¹

A week after the executive order was issued, the House Oversight and Government Reform Committee overwhelmingly approved the 2011 Digital Accountability and Transparency Act, sponsored by Committee Chairman Darrell Issa (R-CA). The legislation, which is now awaiting a full House vote, goes even further than the executive order.

This bill would set up a Federal Accountability and Spending Transparency Board—or FAST Board—to manage a standard process by which agencies can report all spending data. The information would be made publicly available on a website so that government agencies and watchdog groups alike could identify fraud, waste, and abuse.

Issa's bill, which enjoys bipartisan support at a time of intense political deadlock on Capitol Hill, shows that there is momentum in Washington for this important issue. But it is only an important first step in the right direction. What we need is a wholesale reform of a procurement system gone awry. There is reason for hope. An ambitious new pilot project by the General Services Administration is expected to be launched in the first half of 2012, the System for Award Management, which will combine eight existing federal procurement systems into a single database, a welcome step forward if it succeeds. Wise use of good technology can help the federal government eliminate unnecessary staff and programs as well as slash billions of dollars from the budget by preventing fraud, waste, and abuse.

The federal government today uses dozens of standalone databases to track more than half a million business entities that are eligible to bid on the \$536 billion in

federal contracting for goods and services. Take, for example, Melanie Johnson, a Department of Defense contracting officer, who issued in January 2007 a \$300 million contract to AEY, Inc., of Florida to provide weapons and ammunition to the Afghan army and police. Seventeen months later, AEY President Efraim Diveroli was indicted for fraud on the very same contract, for selling more-than-40-year-old Chinese ammunition to the government. Later investigations showed that there was plenty of available information on AEY and Diveroli that should have given Johnson pause—had she known where to look for it.

This is one of the biggest hurdles for government buyers: Bad contractors are often hired because government officials cannot locate past performance information. The lack of cost, pricing, and technical data is another reason why the government ends up paying too much for goods and services.

Charles Smith, a retired military contracting officer who was in charge of the \$37 billion contract with Halliburton in Afghanistan and Iraq, says that the lack of good data on contractors was one of the most significant hurdles in his job. “I would say that 90 percent of the data that we needed was not available.”²

To be sure, the Obama administration has made public reams of new data as part of the Open Government Initiative on websites such as USAspending.gov and through new tool sets like the Federal Awardee Performance and Integrity Information System, or FAPIIS.³

These reforms are not sufficient. This report explains the three key types of data that contracting officials lack, explores efforts to solve this problem, and issues a set of recommendations on how to effectively consolidate data into one single database on contract spending.

We recommend that the federal government:

- Create a single, streamlined, governmentwide electronic system to replace the multiple existing databases
- Adopt a unique way to identify contractors in this database such as by creating a “Related Business Enterprise” database
- Publish past performance data for all contractors in this database

- Make data automatically available unless a genuine reason is established otherwise
- Create an easy-to-use online training manual for federal contracting officers
- Create an online “budget dashboard” to allow the public to follow federal contracting spending in real time
- Make sure that information is accurate and timely by requiring annual inspections of the quality of this data
- Change the rules on what products and services are deemed “commercial” in order to make sure that the government can have access to underlying cost and pricing data to negotiate fair prices
- Buy technical data from companies that have a monopoly contract in order to allow others to compete for the same service and allow market forces to work

A single database will not only ultimately help save money for the taxpayer but will also increase competition among contractors and deliver better services to citizens.

The problem: Shortfalls in federal contract oversight

Contractors historically sold the government everything from “beans to bullets.” Over time the range of products has evolved to include billion-dollar weapons systems and satellites. It has also evolved to include services, including a broad array of human resources and even critical military support functions in war zones.

By some estimates, half of federal workers are no longer employed directly by the government but by private contractors.⁴ Some of this is a result of a broad experiment in the 1990s called Reinventing Government, which attempted to make federal agencies more efficient. Today contractors collect income taxes, draw up government agency budgets, and take minutes at policy meetings. They sit next to federal employees at nearly every agency. More than 7 out of 10 workers are contractors at the Pentagon’s high-security Under Secretary for Intelligence office.⁵ Some of the federal workers in charge of contract oversight are themselves contractors.⁶

All told, the federal government spent \$536.4 billion on contractors in fiscal year 2010 according to the Federal Procurement Data System, more than twice the \$203 billion that was spent a decade earlier, even after adjusting for inflation.⁷ The biggest spender by far was the Pentagon, which spent \$367 billion, or just more than two out of every three federal dollars spent on contracting. While much of the money went to big-ticket items like aircraft carriers and jet fighters, about \$80 billion in federal dollars was spent on information technology alone.⁸

This explosion in contracting has not been accompanied, as it should have been, with an increase in oversight. Indeed, there are fewer controls today, insufficient staffing and funding, and poor-quality data with which to assess contractors’ prices and performance. Let’s take each of these problems in turn.

Lack of staff capacity

Agencies do not have enough staff to cope with the explosion in contracting. In 1990 the federal government employed 165,739 people in the acquisition

workforce, according to an annual survey compiled by the Federal Acquisition Institute. By 2000 this had been cut to 122,787 and nine years later had shrunk even further to 106,506.⁹ Some agencies have managed to stay relatively stable in terms of staffing. The Defense Contract Management Agency, which had 12,539 employees when it was created in 2000, still had 11,114 staff by the end of 2010.¹⁰

But the numbers do not tell the full story. “Measured in dollars [the acquisition workforce] is doing over three times the amount of work, at a higher level of complexity, than it did almost two decades ago,” David Drabkin, acting chief acquisition officer of the General Services Administration, told the Senate Committee on Homeland Security and Governmental Affairs in April 2010.¹¹

Lack of sufficient oversight can lead to fraud, waste, and abuse. Exact numbers are hard to come by but if the Office of Management and Budget estimate of improper payments across government is any indicator, as much as \$29.4 billion could be at risk.¹² Some of this is caught by government auditors: In fiscal year 2010, the Defense Contract Audit Agency audits saved about \$2.9 billion for the government.¹³

A lot more could be saved. The Pentagon, which is both the biggest spender as well as the best organized to catch improper payments, does not review a very large percentage of its payments. A March 2011 report from the Defense Department’s inspector general noted that the Pentagon reported roughly \$1 billion in improper payments—suggesting that less than 1 percent of the estimated \$125 billion in improper payments across government came from the military.¹⁴ The inspector general was skeptical that the Pentagon was doing enough, noting that improper payments reviews covered less than half of 2010’s first-quarter spending. The report also noted that even those reviews were not properly completed and were sometimes inaccurate.

The Obama administration is aware of the lack of adequate contractor oversight and has taken some steps to address it. In April 2009 Defense Secretary Robert Gates announced a Pentagon plan to hire 20,000 acquisition staff over the next five years to tackle the explosion in contracting.¹⁵ Obama in his 2011 budget likewise asked Congress to set aside \$158 million to hire acquisition officers and boost training.¹⁶ This laudable effort, however, is a victim of recent federal budget cuts. The new hiring initiative was halted in August 2010 pending review.¹⁷

In addition to hiring more people, it’s equally important in this fiscally constrained environment that existing contracting officers make every dollar count.

In the CAP report, “A \$400 Billion Opportunity: 10 Strategies to Cut the Fat Out of Federal Procurement,” Raj Sharma showed how better planning, negotiation, and management in contracting can lead to savings in procurement spending.¹⁸

This report takes the next step, examining the kind of procurement data the government collects to assess one contractor over the other and negotiate good prices for taxpayers.

It turns out contracting officers have no shortage of federal databases from which they glean information about bidders. (see box on page 14) They range from a generic registry system such as the Central Contractor Registration, or CCR, to specific databases that track environmental violations, such as the Enforcement and Compliance History Online system, or ECHO, and occupational safety violations, like the Severe Violator Enforcement Program, or SVEP.

Each of these databases can play a crucial role in ensuring the best possible vendor is selected, but many are never consulted because they are incompatible with each other or because the government doesn’t require them to be part of the selection process. That’s according to experts like Charles Smith, former head of the contracting division of the Army Field Support Command, who worked in government contracting for 31 years before he retired in February 2008.¹⁹ Among his other projects, Smith was in charge of the \$35.7 billion Logistics Civil

Health care fraud

The government spends even more money on grants every year as it does on contracts: In 2010 the government paid out \$557.7 billion in grants of which \$369.8 billion went through the Department of Health and Human Services. Unlike contracts that are used to buy goods and services that are ultimately owned by the taxpayer, grant money is paid out for social services like Medicare and Medicaid. But like contracts, the grant money is often abused by private companies that are paid to deliver the services. In 2010 an estimated total of \$70.4 billion was made in improper payments for Medicare

and Medicaid health services. Indeed the federal government’s own estimates of Medicare and Medicaid payment error rates run as high as 52 percent for certain medical supplies. Once again, the problem is a lack of good-quality tracking data to prevent this. In May 2011 the Center for American Progress issued a report, “Payment Police 2.0,” on this subject. Author Marsha Simon concluded that better-integrated databases of medical claims that are matched up against state and federal death records and other public databases will also go a long way towards preventing fraud, waste, and abuse.

Augmentation Program contract, or LOGCAP, awarded to Houston-based KBR, a former subsidiary of Halliburton, to build and maintain military bases in the Global War on Terror.

The lack of good data on contractors was one of the most significant hurdles in his job, according to Smith. “I did my best I could to pick the right contractor relying on the systems that we had available,” he says. “But we relied heavily on bidders to report their relevant past performance to us and they could strategically leave out contracts that they could claim to be irrelevant.”²⁰

Smith says he could also request information from other government agencies but was concerned about the data quality. “My biggest problem was that contracting officers had not properly entered past performance data on old contracts if at all. I would say that 90 percent of the data that we needed was not available.”

Next we’ll look at the kinds of data contracting officials have difficulty accessing.

Lack of past performance data

Melanie Johnson, a Defense Department contracting officer, was asked to review a 2006 bid by a company named AEY, Inc., to supply \$298 million of ammunition to national security forces in Afghanistan.²¹ Seventeen months after the contract was approved on January 26, 2007, 22-year-old Efraim Diveroli, president of AEY, was indicted for fraud. The company was alleged to have supplied 40-year-old substandard ammunition to the Afghans. In addition, tens of millions of the cartridges were manufactured in China, in violation of U.S. purchasing rules, and at least one of the ammo suppliers included a shell company that was on a federal list of possible illegal arms traffickers.²²

When she was interviewed by congressional investigators, Johnson explained that she had asked the Defense Contract Management Agency to review AEY’s accounting systems as well as the company’s financial and transportation capability. She got a positive report from DCMA, she said.

“AEY had a history of satisfactory performance on similar contracts, showed increasing revenue growth, adequate capitalization, and was considered low risk for the evaluated capabilities,” DCMA Executive Director Mitchell Howell would later tell Congress.²³

But that wasn't the whole picture available to government officials. It is true that the company was not banned via the Excluded Party List System database that is run by the General Services Administration. Multiple previous terminations of AEY contracts came to light that had never been recorded in government databases. The State Department also testified that both Diveroli and AEY were on a government watch list of potential illegal arms traffickers, a fact never shared with the Pentagon. Indeed, Johnson later told committee investigators she was not even aware of the existence of the list. An investigation by Government Executive magazine later showed that AEY had also been improperly classified as a "disadvantaged business" in the year preceding the Afghanistan contract.²⁴

Jeffery Parsons, executive director for Army Materiel Command's Provisional Contracting Command, explained to Congress that the prior terminations had been missed because they fell below the minimum threshold.²⁵ He also defended the Pentagon's ignorance of past performance information because the company was required to voluntarily submit previous government contract experience with the bid. "This case is more about a contractor who failed to properly represent their company and failed to comply with the terms and conditions of the contract rather than a faulty contracting process," Parsons said. Yet the problem with this approach to contracting is that most companies would never voluntarily share information that could jeopardize a bid.

Lack of cost and pricing data

On November 4, 2004, a contracting officer with the federal health department's Office of Public Health Emergency Preparedness issued a notice announcing that the agency intended "to negotiate a sole source procurement with BioPort Corporation ... to provide up to 5 million doses of the Licensed Anthrax Vaccine Adsorbed (BioThraxTM) in 5mL multi-dose vials to be delivered to the Strategic National Stockpile within 24 months of the contract award date."²⁶

In a report for the Center for American Progress, Scott Lilly later calculated that BioPort Corporation billed the Pentagon \$1.3 billion for the vaccine, although it had spent just \$250 million to manufacture it.²⁷ Normal profit margins on such contracts were typically around 10 percent of production costs—nothing even close to the 400 percent that BioPort is estimated to have charged.²⁸

The contracting officials claimed they didn't know the actual cost to manufacture the drug. But this information should have been easy to obtain. The vaccine was developed by military scientists at Fort Detrick, Maryland. The factory for the vaccine's production was built by the state of Michigan. And the law permits the government to ask what a product costs so that contracting officers can negotiate reasonable profit margins.

The 1962 Truth in Negotiations Act, or TINA, requires companies seeking a negotiated government contract to submit "cost and pricing" data.²⁹ Unfortunately, TINA does not require cost and pricing data for so-called "commercial" items, which prior to the mid-1990s were defined as items sold to the general public in substantial quantities.³⁰

Government contractors successfully lobbied to have the definition of "commercial" significantly broadened, so that today no one really knows how many high-margin contracts like BioThrax the government is on the hook for.³¹

Most astonishing about this is that the government has no way to recover the money, which it was legally obliged to pay under the price negotiated in the contract. "In the end, prices are jacked up because the cost data isn't transparent, and the government is the loser," says Danielle Brian, executive director of the Project On Government Oversight. She points out that even system parts of military planes, which have no use outside the battlefield, are often classified as "commercial" items.³²

Lack of technical data

Colt Defense LLC enjoyed a 15-year monopoly on the production of the M4 gun after first receiving a sole source contract in 1994. Because the U.S. Army did not buy the technical information on how to manufacture the weapon and open up the purchasing to other bidders, Colt Defense has been able to charge monopoly prices.³³ And this despite the M4's last-place finish in an Army reliability test against three competitors in November 2007.³⁴

In July 2009 the Pentagon finally decided to buy the technical data package from the company.³⁵ And in March 2011 it put out a competitive bid request for the M4 carbine while also soliciting bids to improve the weapon.³⁶ Weapons experts expect that the new contracts will be cheaper and better than the original.³⁷

Both the BioThrax and the Colt case demonstrate the high cost of relying on a single source for a product. “How does the government protect itself from price gouging when contracts are not competitive?” writes Lilly. “One way is to threaten to turn to an alternate provider if a more reasonable price can’t be negotiated.”

Indeed, one of the main ways to make sure that taxpayers get the best value is to require “full and open competition,” a practice that has been federal law in various forms dating back as far as 1809. The idea is that multiple contractors bidding against each other will help keep prices down. Today the rules that govern how this should take place are defined in the Federal Acquisition Regulation—a system of rules based in large part on the Competition in Contracting Act of 1984—that requires federal agencies to use either sealed bidding or competitive negotiation.³⁸

And yet a surprisingly large percentage of government spending is not competitively bid. Between 2000 and 2008 awards of such contracts ballooned from \$73 billion to \$173 billion. A 2010 Government Accountability Office study showed that 31 percent of government contracts in 2009 were never opened up to competition, while another 13 percent that were opened to competition were awarded after receiving only one offer.³⁹

The Committee on Oversight and Government Reform in the House of Representatives asked GAO to investigate. One of the most common reasons given for the failure to compete contracts was that the contracting officers could only find “one responsible source.” A major reason for relying on these specific contractors, according to the GAO, was that “(f)or services supporting DoD weapons programs, the government’s lack of access to proprietary technical data ... and very limited documentation of the reasonableness of contractors’ proposed prices” has led to a “decades-long reliance on specific contractors for expertise.”

With sufficient data in hand, there is an easy, although time-consuming, solution to this problem. The government can encourage industry to compete by making sure that everyone has enough information to bid on contracts. One tried and tested way is to give preferences to small businesses and minority-owned companies to allow them to grow to the size to ensure that there are more “responsible sources” with a track record of selling to the government. Another option is for contracting officers to “debundle” (divide into smaller parts) a contract and only allow one company to win a part of the business, thereby also allowing others to build a track record of selling to the government. Of course such a system is not perfect; major contractors have often abused this system by acting as subcontractors to small or minority-owned companies.⁴⁰

Poor-quality data

Another significant problem for contracting officials is that information in government databases is not always accurate.

A 2009 GAO report noted that data in the Excluded Parties List System “may contain incomplete information, the database has insufficient search capabilities, and the points of contact for information about exclusions are incorrect.” For example, the GAO noted that “a party listed as “Company XYZ, Inc.” in EPLS would not show up in a search if an agency left out the comma in the name and looked for “Company XYZ Inc.” instead.”⁴¹

The GAO said that it had also “identified businesses and individuals that were able to circumvent the terms of their exclusions by operating under different identities” such as by registering under fictitious Social Security numbers or changing the ownership details for the company.

New databases suffer from the exact same problems. The Project On Government Oversight did a study of the newly established USAspending.gov database and noted some fairly substantial mistakes. “These irregularities include subsidiaries being listed independently of their parent companies, companies being assigned multiple rankings, and even a bizarre listing called ‘Government of the United States.’”⁴²

For example, in the FY 2009 top 100 contractor ranking (accessed on April 20, 2010), the watchdog group discovered:

- ITT Corporation appeared twice—#17 and #97
- Government of the United States is #22
- Northrop Grumman Corporation is #3 and its Northrop Grumman Ship Systems, Inc., subsidiary is #35
- McDonnell Douglas Corporation, which merged with Boeing in 1997, is #66

The Federal Awardee Performance and Integrity Information System, or FAPIIS—a brand new database—has similar problems. A search by the Project On Government Oversight on FAPIIS for “Lockheed Martin” produced a list of more than 300 companies, “approximately 200 of which were named “LOCKHEED MARTIN CORPORATION” but with different DUNS numbers (a unique nine-digit identification number provided by Dun & Bradstreet). The rest were an assortment of Lockheed subsidiaries including several that were listed multiple times with the identical name and minor differences such as commas or the word

“INC.” There was even a listing for a “LOCKHEED MARTAIN CORP.” POGO staff also tried to find information about a 2008 suspension for IBM but were unable to track any such information in FAPIIS.⁴³

Finally, it is important to note that in an era of tighter budgets, poorly chosen cuts may actually make procurement less efficient and ultimately cost taxpayers more in the long run.

Lack of funding for good initiatives

This administration has made creative attempts to increase transparency, such as by setting up USASpending.gov and FAPIIS, but these efforts are threatened. The 2011 appropriations bill slashed the \$34 million Electronic Government Fund, which pays for these efforts, to \$8 million, which will effectively reverse public access to contract data.⁴⁴

“While we will continue to work with agencies to improve the quality of data on the IT Dashboard and USASpending, we will not be able to fund development efforts to improve data accuracy through automation and streamlining,” Kundra told Congress in May 2011. “For example, there will be a marked reduction in technical support provided to the contractor and grantee communities who enter data on federal spending.”⁴⁵

The USASpending.gov initiative was based on a streamlined model database developed by the private sector that ironically allowed big businesses that could afford to pay for it win yet more business as opposed to leveling the playing field by making information accessible to all comers and reduce costs by increasing competition.

Such databases are available from companies like Eagle Eye (now owned by Bloomberg), FedSources, and Onvia, who offer a fee-based service to contractors to help them analyze previous awards. This includes the ability to research individual contracting officers to help bidders tailor their pitches.⁴⁶ While this analysis is fee-based, all the raw data is derived from public sources provided by government.

There are also public service efforts that offer free data tools to analyze contractors such as the Project On Government Oversight’s Federal Contractor Misconduct Database and OMB Watch’s fedspending.org.

In the next section, we discuss several of these new federal initiatives in greater detail.

A brief history of recent reform efforts

The first step that any business wishing to sell to the government must take is to apply for a listing on the Central Contractor Registration database created under the Federal Acquisition Streamlining Act of 1994. As of November 18, 2011, a total of 626,056 entities were registered.⁴⁷ The Pentagon alone estimated that it does business with 235,000 separate vendors.⁴⁸

Contracting officials have many tools to compare this multitude of potential bidders. For example, the Contractor Performance Assessment Reporting System, or CPARS, is a web-based system that records how well contractors perform. Those data are then put into the Past Performance Information Retrieval System, or PPIRS, database, which contracting officers can use to choose between vendors. Another key database is the Excluded Party List System, or EPLS, which contracting officers are supposed to consult before awarding contracts to make sure a vendor isn't suspended or debarred.

These are just four of dozens of databases federal officials can use. (see box on next page) Each uses a different interface, making it hard to obtain a complete picture of individual companies and assess them against each other. The Obama administration's attempts to address this issue are detailed below. Progress has been hampered by the complexity of the existing system, lack of good quality data, and by recent budget cuts.

An attempt to combine databases

Under the 2009 National Defense Authorization Act, Congress required contracting officers at agencies to check a new database called the Federal Awardee Performance and Integrity Information System, or FAPIIS, before issuing any contract worth more than \$150,000.⁴⁹

An Alphabet Soup of Contractor Tracking Databases

1. **Central Contractor Registration**, or CCR, available at <https://www.bpn.gov/ccr/default.aspx>.
2. **Common Information Data Network Exchange**, or CIDNE, available at <http://www.issinc.com/solutions/cidne.html>.
3. **Contractor Performance Assessment Reporting System**, or CPARS, available at <http://nawctsd.navair.navy.mil/Resources/Library/Acqqguide/pastperf.htm#2>.
4. **Department of Defense Revolving Door Database** (not public)
5. **Enforcement and Compliance History Online**, or ECHO, available at <http://www.epa-echo.gov/echo/>.
6. **Electronic Subcontracting Reporting System**, available at <http://www.esrs.gov/>.
7. **Excluded Parties List System**, or EPLS, available at <https://www.epls.gov/>.
8. **Federal Agency Registration**, or FedReg, available at <https://www.bpn.gov/far/>.
9. **Federal Awardee Performance and Integrity Information System**, or FAPIIS, available at <http://www.ppirs.gov/fapiis.html>.
10. **Federal Business Opportunities**, or FBO, available at <https://www.fbo.gov/>.
11. **Federal Election Commission Campaign Finance Disclosures**, available at <http://www.fec.gov/finance/disclosure/srssea.shtml>.
12. **Federal Funding Accountability and Transparency Act Information Center**, available at <http://www.ffata.org/ffata/>.
13. **Federal Procurement Data System-Next Generation**, or FPDS-NG, available at <https://www.fpds.gov/fpdsngcms/>.
14. **GAO Bid Protests**, available at <http://www.gao.gov/legal/bidprotest.html>.
15. **GSA Schedule Library**, available at <http://www.gsaelibrary.gsa.gov/ElibMain/home.do>.
16. **Senate and Executive branch lobbying reports** <http://soprweb.senate.gov/index.cfm?event=selectfields>.
17. **Online Representations and Certifications Application**, or ORCA, available at <https://orca.bpn.gov/>.
18. **Occupational Safety & Health Administration Violations**, available at <http://www.osha.gov/pls/imis/establishment.html>.
19. **Past Performance Information Retrieval System**, or PPIRS, available at <http://www.ppirs.gov/>.
20. **Public Financial Disclosure Report for Executive branch officials (SF-278)**, available at <http://www.usoge.gov/forms/sf278.aspx>.
21. **SEC Filings (EDGAR)**, available at <http://www.sec.gov/edgar.shtml>.
22. **Synchronized Predeployment and Operational Tracker**, or SPOT, available at <http://www.bta.mil/products/spot.html>.
23. **USAspending.gov**, available at <http://usaspending.gov/>.
24. **Wage Determinations On-Line**, or WDOL, available at <http://www.wdol.gov/>.

FAPIIS is supposed to combine many of the existing government databases to allow officials to check if bidders have faced any civil, criminal, or administrative proceedings⁵⁰ The database is also supposed to allow contracting officers to check:

- Past performance evaluations
- Records of suspensions and debarments

- Administrative agreements issued in lieu of suspension or debarment
- Non-responsibility determinations
- Contracts that were terminated for fault and defective price determinations
- Incidents that put its employees in harm's way⁵¹

The database is not comprehensive—only data from the last five years are available. A number of cases are also excluded—those that are settled without a conviction or those that are settled without admission of fault or liability. This means that contractors now have an even more powerful incentive to make payments or otherwise settle misconduct cases to ensure they are never recorded in the database.⁵²

The biggest contractors, who can afford to negotiate settlements, are rarely suspended or debarred: An analysis by the staff of Sen. Bernard Sanders of Vermont concluded that Lockheed Martin, which earned \$234 billion in federal contracts between 2001 and 2010, has been charged a dozen times with government contract fraud since 1995. The company has paid fines and settlements of \$68.4 million at the very minimum. Likewise, Boeing, which received \$196 billion in federal contracts between 2001 and 2010, paid fines and settlements of \$88.9 million or more. And Northrop Grumman, which received \$147 billion in federal contracts between 2001 and 2010, paid \$519.8 million in settlements and fines.⁵³

Unless contracting officers have better data to find out if companies like AEY or Boeing have had problems in the past, they may well end up picking bad contractors. And so long as a company can stay out of trouble for five years after any performance problems are reported, the complaints are automatically erased from FAPIIS unless someone else calls in to complain. The lack of complaints may suggest that the performance has improved but the company may also have simply cracked down on whistleblowers.

It should be noted that although contracting officers are required to use the FAPIIS data to judge bidders, they are not restricted to it. The Federal Acquisition Regulation allows contracting officers to ask for additional information to determine whether FAPIIS data indicate that the contractor had previously been subjected to administrative, civil, or criminal review. The contracting officer can, “with the assistance of appropriate specialists,” set “special standards of responsibility” for many kinds of specialized goods and services in order to choose a winning bidder.⁵⁴ As in the case of AEY, however, the absence of any warning flags can mean that a contracting officer may not realize that the company has produced shoddy work in the past. In March 2010 President Obama promoted FAPIIS, saying: “[W]e’ll be able to

see, before any new contract is awarded, whether a company plays by the rules, how well they've performed in the past.”⁵⁵

Yet a number of watchdog groups have questioned how well the new database is working. A version of the database was released to the public on April 15, 2011, and was immediately criticized harshly. The Sunlight Foundation, one of the most active transparency advocates in Washington, called it the “worst website” they had ever seen, while OMB Watch called it a “steaming pile” and the Fort Worth Star-Telegram newspaper blog declared: “New federal website offers so much government transparency it’s invisible.”⁵⁶ It’s hard to disagree with these assessments. The website has numerous broken security certificates, an impossible-to-navigate set of choices, a badly designed and redundant “captcha” system to prevent robots from using the website—and most importantly of all, almost no data.

Open government initiatives

The Obama administration has taken a very active role in providing new contract data to the public as part of the Open Government Initiative. Some of this is a result of the Federal Funding Accountability and Transparency Act of 2006, a bill introduced by then-Sen. Obama and Sen. Tom Coburn (R-OK) that required the government to disclose details of all organizations receiving federal funds beginning in 2007. The result was a new website: USAspending.gov, which launched in December 2007.⁵⁷

In 2009, immediately after the new administration took office, Office of Management and Budget Chief Information Officer Vivek Kundra set about expanding the information available to the public on procurement at USAspending.gov, notably by adding the so-called IT Dashboard, a special section on information technology buying where progress on federal IT could be monitored directly.⁵⁸

“Anyone from agency officials to the American public can now identify and monitor the performance of IT projects, just as easily as they can monitor the stock market or baseball scores,” Kundra testified before Congress on March 23, 2010. “The Dashboard ends the days of faceless accountability. It provides not only the contact information for the agency official responsible for the project, but also shows you their picture and lets you contact them directly to provide feedback on the project’s performance.”⁵⁹

OMB monitored the IT Dashboard through “TechStat” accountability sessions, or high-level face-to-face reviews of IT programs. Kundra estimates that IT Dashboard allowed the government to save approximately \$3 billion in annual spending and

reduced project completion times from more than two years to eight months on average.⁶⁰ Kundra also launched Data.gov to provide the public a way to easily obtain “high value, machine-readable datasets” generated by the government.⁶¹

Open government advocates hailed these moves. “The returns from these e-government initiatives in terms of transparency are priceless,” wrote Daniel Schuman, staff counsel at the Sunlight Foundation, on March 23, 2011.⁶²

Indeed, making these data available to the public is a good start. Despite the fact that USAspending.gov makes available company names and addresses, goods and service codes, place of performance, spending figures, degrees of competition, and limited socioeconomic information, however, it is far from complete. Quite a lot of information such as the requests for proposals, final contracts, specific delivery and task orders, any amendments and modifications to the final contract, or how the vendor has performed is not available—even though all that information is theoretically part of the public record.

The federal government has successfully implemented a more comprehensive database for the \$787 billion American Recovery and Reinvestment Act of 2009, or ARRA. The creation of Recovery.gov gave taxpayers simple tools to track the money in real time such as charts, graphs, and national overview maps that allowed users to drill down to specific zip codes. In addition, users were given ways to report fraud, waste, or abuse of ARRA funding. The initial results are promising. Less than 2 percent of Recovery Act contracts and grants were reported for fraud, significantly less than the typical 5 percent to 7 percent of projects.

States have also built similar systems successfully. Virginia allows public access to a website (eva.virginia.gov) with procurement data such as cost estimates and competitive bids and offers. Other states like Arizona, California, Connecticut, Florida, Idaho, Maine, Maryland, and North Carolina have similar e-procurement initiatives, while other states like Minnesota, Pennsylvania, and Texas have used strategic sourcing to bundle purchasing and cut costs.⁶³

Other reform efforts

Lawmakers have made other modest efforts, such as then-Sen. Obama and Sen. Coburn’s Strengthening Transparency and Accountability in Federal Spending Act of 2008, which calls for a web database that contains requests for proposals, contracts, scope of work, profit incentive details, and extent of competition.⁶⁴

In May 2010 Sen. Russ Feingold (D-WI) joined Coburn in introducing the Federal Contracting Oversight and Reform Act of 2010, which would have expanded FAPIIS.⁶⁵ Neither bill passed.

On June 13, 2011, President Obama signed an executive order creating an 11-member oversight and accountability board to “replicate” across the federal government the success of Recovery Accountability and Transparency Board, that was set up under the American Recovery and Reinvestment Act of 2009 to provide transparency and prevent fraud, waste, and abuse. The same day, Rep. Darrell Issa (R-CA) introduced the Digital Accountability and Transparency Act that made almost the same recommendations. (The Issa bill, however, has some significant problems. It rescinds the Coburn-Obama law that created USAspending.gov. Also, the law is intended to sunset in seven years, which would mean that the new database will cease to exist if Congress does not reauthorize it on time. That could create problems down the road.)

The Obama administration has also been taking a number of specific steps to reduce waste, fraud, and abuse in federal contracting by issuing memos to encourage improvements at agencies. For example, in response to recent GAO findings, the Office of Federal Procurement Policy issued a memo on September 29, 2011, that directed agencies to take steps across government to reduce duplicative contracts for supplies or services.⁶⁶ Likewise in response to a GAO report that found that a number of federal agencies had failed to suspend and debar bad contractors, the White House issued a memo on November 15, 2011, directing agencies to appoint a senior official to review these policies, as well as provide more training on how to implement existing government rules.⁶⁷

The General Services Administration is also creating a new “System for Award Management,” or SAM, that will combine eight existing federal procurement systems into a single database to make it easier to track contractor performance. The first phase of SAM is expected to launch in April 2012.⁶⁸ If this effort succeeds, it will help resolve many of the issues we have discussed in this report. But it may not be easy to implement such a system given how hard it has been to integrate older “legacy” government databases. Such efforts have failed in the past and it may be wiser to design a new system from scratch than to try to fix what is an very complex and broken system in the first place.

The reforms and advances we have described have yielded meaningful change. In the next section, we lay out nine concrete steps that Congress and the executive branch should take to truly streamline federal procurement and deliver savings to the taxpayer.

Recommendations

Contracting officials from Alaska to Afghanistan need to have easy and robust means to pick the best bidders as well as prevent future fraud, waste, and abuse. Here are nine recommendations on how to make that happen.

Replace the complex system of multiple contractor databases with a single streamlined government-wide electronic system

The system should store all pre- and post-award contracting records, as well as contract evaluation, and allow quick and easy comparisons across multiple platforms. To be sure, there will be an upfront cost to converting over older databases, but the money expended on a single integrated system will be considerably lower than to maintain 25 different systems. Even if access to certain data needs to be restricted, it should be maintained in the same format in order for authorized officials to be able to search it easily.

Adopt a unique way to identify contractors in the single database

Federal authorities use a variety of codes—such as Central Contractor Registration, or CCR; Commercial And Government Entity, or *CAGE*; and Dun & Bradstreet numbers, or DUNS—to identify contracting entities. None of these are good options since individuals can easily obtain multiple codes.

One way to deal with this could be to create a “Related Business Enterprise” database, where the government creates a Contractor Control Number. If a company has more than one DUNS number, for example, it would be required to file all of them in the Related Business Enterprise database, associated with that Control Number.

Publish performance data on contractors in the single database

In order to compare two bidders offering the same product at the same price, the key deciding factor is going to be how each one performed in the past. It's not enough to simply publish findings of fault or liability. Details of Corrective Action Requests, or CARs, and settlements must also be included, in order to identify contractors that have repeated problems, and those who pay fines to erase faults. Such data are, in fact, published routinely in bid protest decisions made by the GAO.⁶⁹

Create an automated system to disclose information in the database unless a genuine reason is established to withhold certain data pending formal review

Automatic disclosure could help reduce the cost and number of Freedom of Information Act requests as well as the time required to reply to them.⁷⁰ Today much information is only released when an interested party requests it, and after a time-consuming and costly review process. The results are then typically released directly to only the requester even though all data released are by definition public records.

Create an easy-to-use online training manual for federal contracting officers across government in how to use this new database

While this may seem obvious, it is important to remember that one of the reasons why contracting officers are not able to track bad contractors is because they are unaware of the many databases that are out there and how to use them.

Create a "budget dashboard"

The government should promote its new tools by developing an online "budget dashboard" that allows the public to follow the actual number of contracts, dollar values, and the true nature of competition—to decide for themselves if change is occurring. The data should be easy to bulk-download and use in outside websites and applications.

Ensure that information is accurate and timely

Inspectors general and the GAO should conduct annual audits of procurement and contractor data quality.

Narrow the “commercial” designation

The government should change the rules on what products and services are deemed “commercial” so that officials have expanded access to underlying cost and pricing data. Products that are only or primarily sold to the government are not subject to market competition and the taxpayers risk being ripped off unless there is a mechanism to prevent profiteering and to negotiate fair prices. When government buyers negotiate prices, they must be able to make sure that taxpayers do not get ripped off by the inaccurate labeling of an item or service as “commercial,” which prevents them from getting the best deal.

Buy technical data from companies with monopoly contracts

Such data are necessary in order to allow others to compete for the same service and allow market forces to work. These data are sometimes priced outside government reach but the resulting lack of competition causes quality to fall and prices to rise. Government needs to negotiate fair prices for such technical data.

Conclusion

The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

— *Federal Acquisition Regulation*⁷¹

How to prevent fraud, waste, and abuse in order to save money and reduce the federal budget has been an important topic of discussion in Washington for many years. Scandals from the \$7,600 coffee machine and a \$670 armrest in the C-5 cargo plane in 1985 to the billions allegedly wasted by Halliburton in Iraq in 2003 have sown deep suspicion in the public mind that contractors are out to bilk the taxpayer.⁷²

In order to make sure taxpayers get the best value for their money, federal officials rely on complex databases that they can look up to learn about the companies that want to get work from the government. Using these databases is difficult: Each of the databases is different and thus not easy to compare. Also, the data are sometimes inaccurate or incomplete partly because some information is self-reported by the contractors.

Contracting officers like Charles Smith will never be able to pick the best contractor unless we improve and consolidate these databases. Despite the fact that something like \$80 billion is spent on IT systems, no one in the federal government, let alone the general public, has any simple way to find out if a contractor has done a good job or a bad one in the past.

In summary, these are the next steps that the federal government needs to undertake:

- Replace the complex system of multiple contractor databases with a single streamlined government-wide electronic system that would store all pre- and post-award contracting records as well as past performance evaluations.
- Adopt a unique way to identify contractors in the single database such as by creating a “Related Business Enterprise” database.
- Publish past performance data for all contractors in this database.
- Create an easy-to-use online training manual for federal contracting officers across government in how to use this new database.
- Make data automatically available unless a genuine reason is established to withhold certain data for official review first.
- Create an online “budget dashboard” to allow the public to follow federal contract spending in real time.
- Make sure that information is accurate and timely by requiring annual inspections of the quality of this data.
- Change the rules on what products and services are deemed “commercial” in order to make sure that the government can have access to underlying cost and pricing data to negotiate fair prices.
- Buy technical data from companies that have a monopoly contract in order to allow others to compete for the same service and allow market forces to work.

The defining principle should be presumption of transparency rather than concealment of information. The value of such information goes way beyond just public confidence in the government and the contracting process. With open access to information, genuine competition will increase because the emphasis will be on quality of production and value to taxpayers, which is ultimately key in an era of budget shortfalls.

About the author

Pratap Chatterjee is a journalist and the author of two books on military contracting—Iraq, Inc. (Seven Stories Press, 2004) and Halliburton’s Army (Nation Books, 2009) He worked as a visiting fellow at the Center for American Progress from 2010 to 2011.

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